

### REMARKS

In the Action mailed December 1, 2006, the Examiner issued a new ground for rejection as to all pending claims 1-17, 44, 48-52, 55 and 60-70, and made the rejections final. On April 2, 2007, Applicants filed a notice of appeal. Applicants have opted to forego an appeal at this time, and instead are filing a request for continued examination (RCE), and in connection with filing the RCE submit the following remarks responsive to the Action mailed December 1, 2006. No amendments are being made, and thus claims 1-17, 44, 48-52, 55 and 60-70 remain pending. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

#### **Rejections under 35 U.S.C. 112, first paragraph**

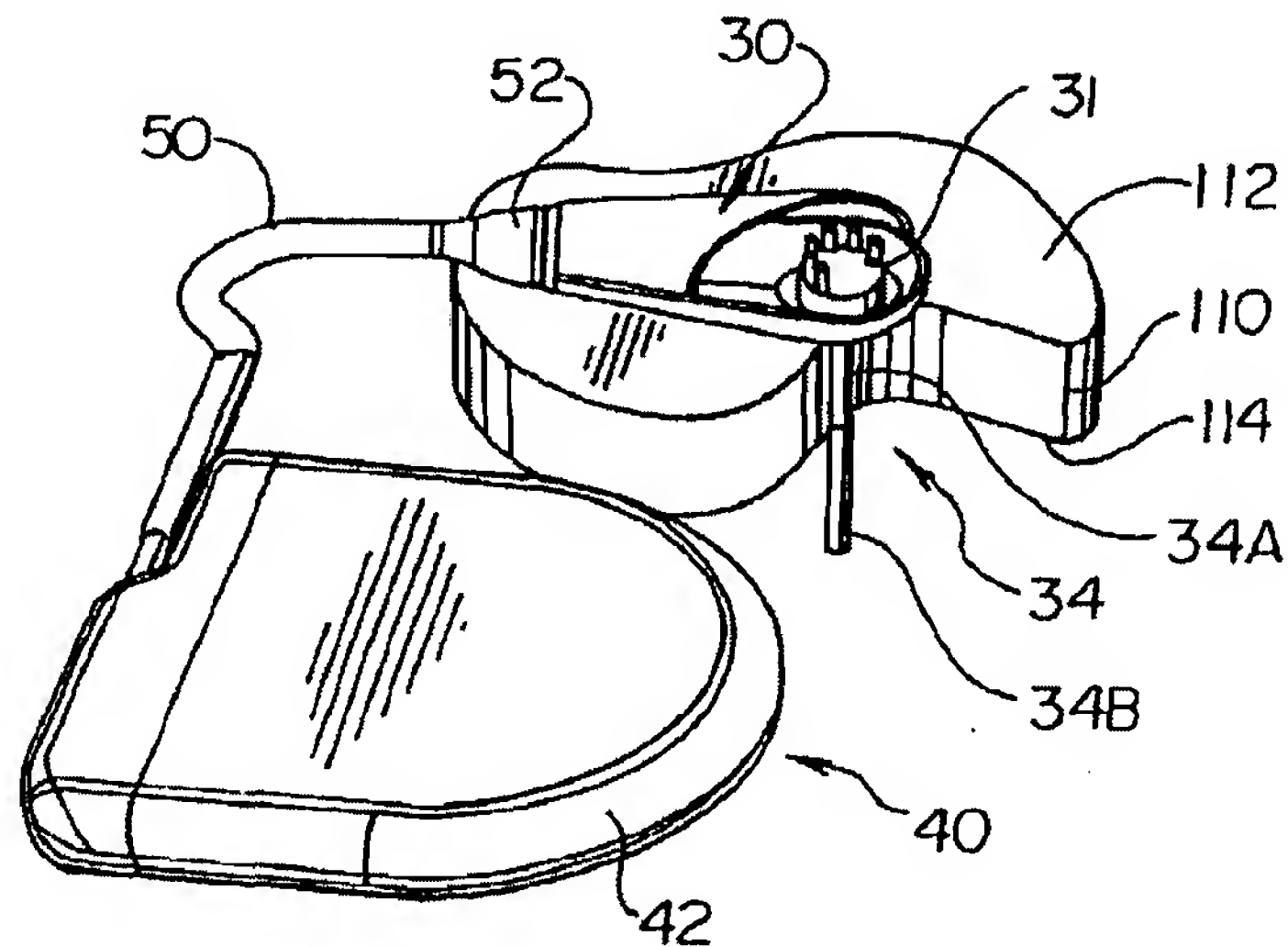
The Examiner rejected all pending claims 1-17, 44, 48-52, 55 and 60-70 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. For the reasons discussed below, Applicants submit that the pending claims comply with the written description requirement.

The Examiner contends that “[a]ll of the claims now recite that the proximal portion is more crush resistant than the distal portion and the distal portion is more flexible than the proximal portion.” The Examiner further contended, “[h]owever, the specification only recites that the proximal portion is relatively crush resistant and the distal portion is relatively flexible,” and “[i]t does not state what the flexibility or crush resistance is relative to.” The Examiner concluded, “[a]s such, the specification makes no pronouncement as to the flexibility of the proximal portion of the crush-resistance of the distal portion,” and “[a]s such, the amendment introduces new matter.”

Applicants disagree. Applicants submit that the written description and figures clearly support the claim limitation of a pressure transmission catheter “having a distal portion and a proximal portion, ... wherein the proximal portion is more crush resistant than the distal portion and wherein the distal portion is more flexible than the proximal portion.” Support for the limitation can be understood in connection with FIG. 1C, which shows an example of such a

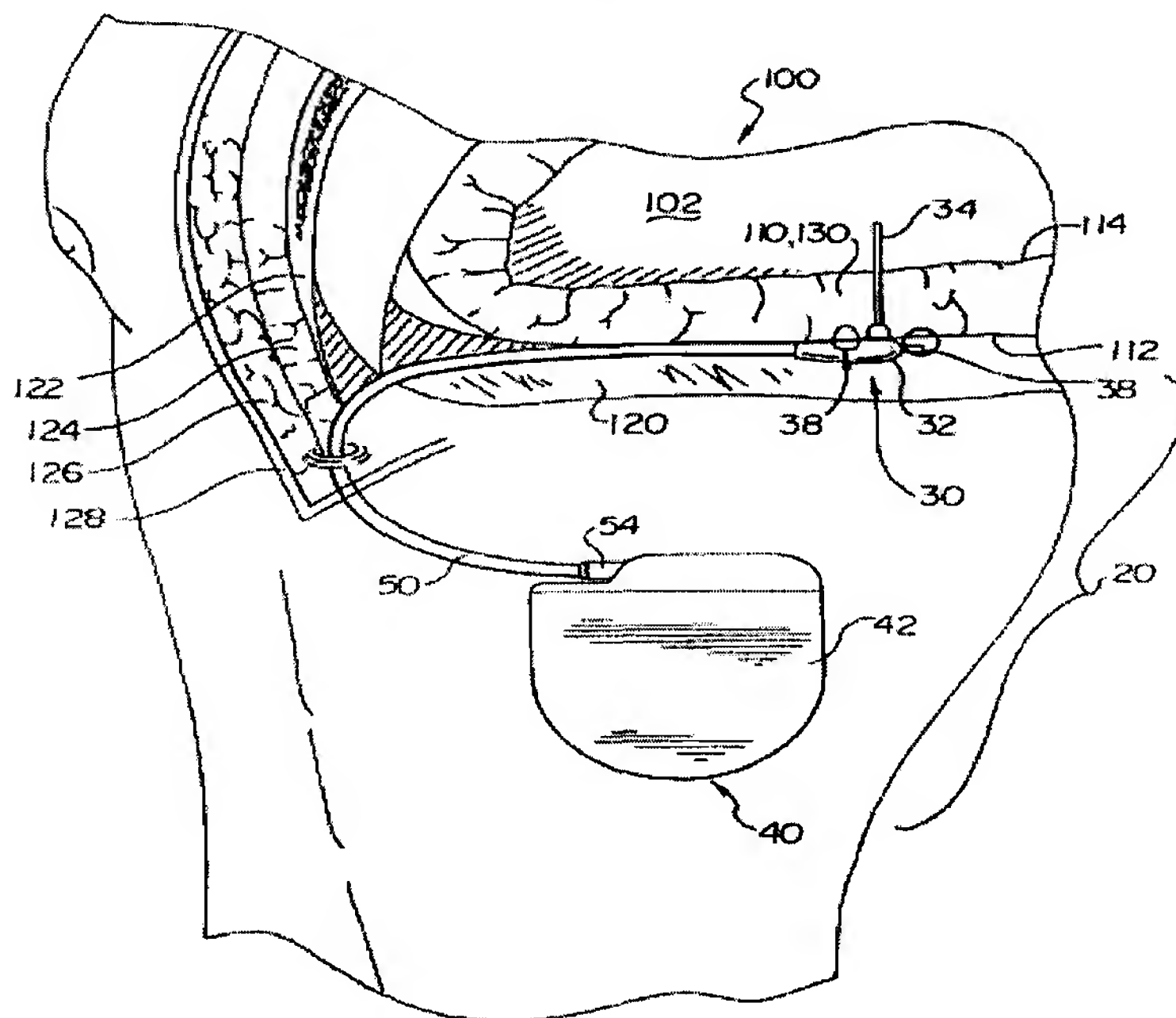
pressure transmission catheter as catheter 34. The catheter 34 has a proximal portion 34A and a distal portion 34B.

**Fig. 1C**



In addition, FIG. 3A shows the catheter 34 in position, with a distal portion being disposed endocardially 102 (within the heart), and a proximal portion extending across the myocardium 110.

**Fig. 2A**



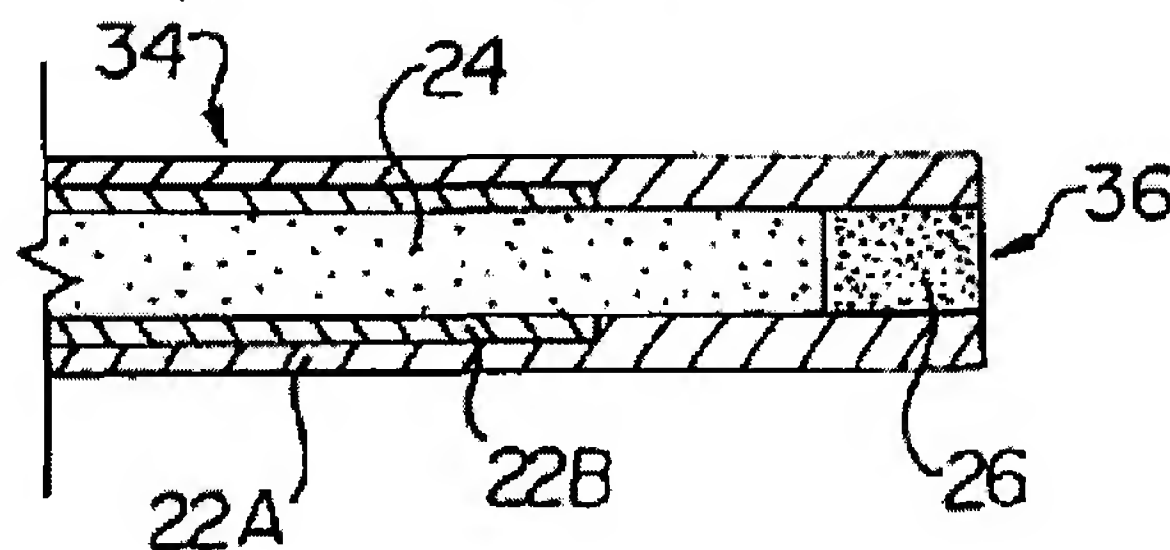
Applicants written description (at page 17, line 17 to page 18, line 4) provides:

[0055] The PTC 34 may be positioned across a heart wall, with the proximal portion 34A extending across myocardium 110 and the distal portion 34B disposed endocardially, as schematically shown in FIG. 1C, and as will be described in more detail hereinafter. The proximal portion extends across the entire myocardial wall 110, from the exterior myocardial surface or epicardium 112, to the interior myocardial surface 114. Optionally, the proximal portion 34A may extend across the pericardium, epicardium and myocardium. Because the heart walls are dynamic structures subject to expansion and contraction, the proximal portion 34A may be made relatively crush-resistant, with sufficient crush resistance to prevent collapse caused by myocardial contraction. The distal portion 34B may be made relatively flexible with radiused corners to provide an atraumatic tip.

Applicants submit that the underlined portion above, at a minimum, provides support for the claim limitation in dispute, namely, that “the proximal portion is more crush resistant than the distal portion and wherein the distal portion is more flexible than the proximal portion.” Applicants submit that the juxtaposition of the discussion of the proximal portion 34A being relatively crush-resistant, with the discussion that the distal portion is relatively flexible would be clearly understood by a reader and a person skilled in the art that the relative nature of the proximal portion's crush resistance is with respect to the distal portion, and the relative nature of the distal portion's flexibility is with respect to the proximal portion.

The disputed claim limitation is further supported by Applicants specification at FIG. 1M and at page 18, lines 5-16:

***Fig. 1M***



[0056] For example, as seen in FIG. 1M, the PTC 34 may comprise a stainless steel or titanium hypotube 22B (e.g., an extension of the nipple tube) extending through the proximal (myocardial) portion 34A, with a polymeric tube 22A extending over and beyond the hypotube 22B into the distal (endocardial) portion 34B. Alternatively, the proximal portion 34A may be formed of a polymeric material having a relatively high durometer and the distal portion 34B may be formed of a polymeric material having a relatively low durometer. The proximal and distal portions 34A/34B may be formed of separate tubes connected together, or by a single tube with a gradient stiffness, such as provided by interrupted layer coextrusion processes. As a further alternative, the proximal portion 34A and the distal portion 34B may comprise a polymeric tube having a relatively low durometer, with a rigid polymeric sleeve having a relatively high durometer extending over the proximal portion 34A.

With the above-described embodiments, it is clear that the proximal portion would be stiffer than the distal portion, and the distal portion would be more flexible than the proximal portion.

Further yet, support may be found by way of comparison to an alternative embodiment that does not have the claimed feature described in Applicants' specification at page 27, lines 1-5:

If the distal tip of the PTC 34 is used to puncture the septal wall 132, it is desirable to utilize a distal portion 34B that has sufficient column strength to avoid buckling when crossing the septal wall 132. As such, the relatively rigid and crush resistant proximal portion 34A discussed with reference to FIGS. 1A-1C may be extended into the distal portion 34B.

Applicants submit that this makes clear that the relative crush resistance of the proximal portion 34A shown in FIGS. 1A-1C is in comparison to the distal portion 34B.

Accordingly, Applicants submit that the claims comply with the written description requirement of 35 U.S.C. 112, first paragraph, and request that the Examiner withdraw the rejection of claims 1-17, 44, 48-52, 55 and 60-70.

### **Conclusion**

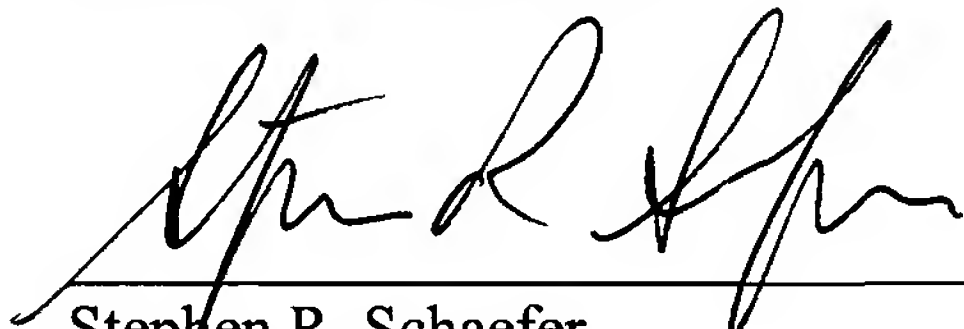
Applicants submit that claims 1-17, 44, 48-52, 55 and 60-70 are in condition for allowance, and request that the Examiner issue a notice of allowance.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Examiner is authorized to charge deposit account no. 06-1050 \$405.00 for RCE fee and \$1,115.00 for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: Oct. 31, 2007

  
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